

§ 1303.104

10 CFR Ch. XIII (1–1–09 Edition)

(1) The rules and regulations of the Board.

(2) Statements of policy adopted by the Board.

(3) Board reports to the U.S. Congress and the U.S. Secretary of Energy.

(4) Board correspondence with Congress and the Department of Energy (DOE).

(5) Transcripts of Board meetings.

(6) Biographical information about current Board members.

(7) Copies of records released in response to FOIA requests.

(e) The cost of copying information available in the Board office shall be imposed in accordance with the provisions of § 1303.108.

§ 1303.104 Board records exempt from public disclosure.

5 U.S.C. 552 provides that the requirements of the FOIA do not apply to matters that are:

(a) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and in fact are properly classified pursuant to such an executive order.

(b) Related solely to the internal personnel rules and practices of the Board.

(c) Specifically exempted from disclosure by another federal statute, provided that such statute:

(1) Requires that records be withheld from the public in such a manner that leaves no discretion on the issue; or

(2) Establishes criteria for withholding or refers to particular types of matters to be withheld.

(d) Trade secrets, and commercial or financial information obtained from a person and privileged or confidential.

(e) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Board.

(f) Personnel, medical, or similar files that disclosing would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes. Buy only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of any confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement agency in the course of a criminal investigation or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports, prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 1303.105 Requests for Board records.

(a) A written FOIA request must be submitted. You may:

(1) Write: NWTRB Designated FOIA Officer, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201;

(2) Send an e-mail request to foia@nwtrb.gov and specify that this is a FOIA request in the subject line; or

(3) Fax: 703-235-4495.

(b) When making a request for records about a person, Privacy Act regulations also may apply. Please check the regulations for additional requirements before submitting a request. When making a request for

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records about someone other than yourself, you must include either:

(1) Written authorization signed by the person permitting you to see the records; or

(2) Proof that the individual is deceased (e.g., a death certificate or an obituary).

(c) A request will be considered received for purposes of §1303.107 on the date that it is received by the Board's FOIA office. For prompt handling, write "Freedom of Information Act Request" on the letter and envelope or in the subject line of the Web request or fax.

(d) Each request must clearly describe the desired records in sufficient detail to enable Board personnel to locate them with reasonable effort. Response to requests may be delayed if the records are not clearly described.

(e) Whenever possible, requests should include specific information about each record sought, such as date, title or name, author, recipient, and subject.

(f) If the FOIA Officer determines that the request does not clearly describe the records sought, he or she will either advise you of the additional needed to locate the record or otherwise state why the request is insufficient. The requestor will then be given the opportunity to provide additional information or to modify their request.

(g) Submitting a FOIA request shall be considered a commitment by the requestor to pay all applicable fees required under §1303.108 unless the requestor seeks a waiver of fees. When making a request, you may specify a willingness to pay fees up to a specific amount.

(h) The FOIA does not require the Board to:

(1) Compile or create records solely for the purpose of satisfying a request for records.

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some time in the future.

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requestor that the records have been destroyed or otherwise disposed of.

§ 1303.106 Responsibility, form, and content of responses.

The Board's Executive Director or his/her designated FOIA Officer is authorized to grant or deny any request for a record and determine appropriate fees. When determining which records are responsive to a request, the Board will include only records in its possession as of the date of the search.

(a) If no records are responsive to the request, the FOIA Officer will notify the requestor in writing.

(b) When a FOIA Officer denies a request in whole or in part he/she will notify the requestor in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reasons for the denial, including the FOIA exemption(s) that the FOIA Officer has relied on the denying the request; and

(3) A statement that the denial may be appealed under §1303.114 and a description of the requirements of that section.

(c) *Consultations and referrals.* When a request for a record not produced by the Board is received, the Board shall refer the requestor to the issuing agency in writing. The Board may hold records that contain or refer to non-public information obtained from other federal agencies (co-mingled records). If those co-mingled records are requested, the Board shall determine whether the portion of those records produced by the Board can be released. Before any portion of a co-mingled record is released, the Board shall redact the non-public information obtained from other federal agencies. The Board shall inform the requestor of the reason for the redaction and shall refer the requestor to the issuing agency in writing.

(d) *Notice of referral.* When the Board refers all or part of a request to another agency, it shall give the requestor the address of the agency contact and the section(s) referred.